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CONSTRUCTION PROJECT PARTNERING: TWO CASE STUDIES

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CONSTRUCTION PROJECT PARTNERING: TWO CASE STUDIES

Case studies in project partnering

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Abstract

Two case studies of project partnering in Australia are described. Case Study 1 is of the Woodford Prison, a design and construct project that won the Australian Master Builders 1996 National Partnering Award. Case Study 2 is of the Southport Courthouse, a project procured by conventional lump-sum competitive tender which was demonstrating signs of claimsmanship, time and cost overruns and threats of disputation. Both projects involved the same contractor and government department client. The results indicate that quite different outcomes can occur when using different project procurement methods, even though the same personnel are involved using the same partnering processes and procedures. A second inference that may be drawn is that the general conditions of contract may need to be in concert with the aims and objectives of partnering.

Keywords: Case studies, disputes, partnering, procurement.

1 Introduction

In another paper in this conference[1], we have described the origins of the partnering methodology in the Australian construction industry and provided some measure of its widespread popularity. In this paper, we examine the **process** of partnering in the context of two recent construction projects. These case studies show, surprisingly, that quite different outcomes can occur when using different project procurement methods, even though the same personnel are involved using the same partnering processes and procedures.

2 The partnering process

Various definitions have been offered of partnering (eg. [1], [2] and [3]) all of which have a common focus on the creation of a spirit of teamwork and trust among the parties involved in the construction process. Thus, the key elements of a partnering project can be construed as:

- communication;
- commitment;
- trust;
- teamwork;
- respect; and
- responsibility.

2.1 Communication

Communication is a very important aspect of any project. Partnering tries to breakdown the usual barriers of communication, making it more open, so that anyone can speak to anyone thereby enabling problems to be solved at lower levels rather than having to go all the way to the top and back down again. The outcome of this is: faster response times; greater involvement and responsibility of participants in decision making; and a friendlier, more cooperative project team.

2.2 Commitment

Traditionally the commitment of a party in a construction project has been to a particular area without much thought to what happens outside their own area of expertise. Partnering requires more of a commitment from everyone, including top management, to the overall goals of the project, and the partnering process.

2.3 Trust

Partnering is not a contractual obligation, it is a moral agreement founded upon trust. Trust can be fostered by efficient and open communication between the parties.

2.4 Teamwork

Partnering a project means not trying to maximise one's own gains at everyone else's expense. It means working together as a team to find solutions that benefit all parties, everyone works together for the benefit of the project.

2.5 Respect

Each party must have respect for the other parties and the roles that they play in the project. Successful teamwork is not possible without respect for the other parties.

2.6 Responsibility

In a partnering project all parties are responsible for completing their own portion of the project *and* for contributing to the overall goals of the project.

2.7 Legal implications

A partnering agreement is in essence a moral agreement superimposed on a contractual agreement. For the most part the contract documentation generally makes no mention of partnering. The partnering charter is merely an expression of the intention of the parties to co-operate for mutual benefit. Partnering does not change the responsibility of any party to the head contract. Contractual obligations are deemed to be independent of the partnering process, however, there is still a risk of confusion of contractual and statutory obligations in relation to partnered projects.

"The agreements and representations associated with the partnering process, even if not intended to be legally binding, may impact on contractual risk allocation in the following ways:

- the implication of a contractual duty of good faith;
- the creation of fiduciary obligations;
- misleading and deceptive conduct (under the Trade Practices and Fair Trading Acts);
- promissory estoppel and waiver; and
- confidentiality and 'without prejudice' discussions"[4].

Due to the infancy of partnering in the Australian construction industry the legal implications of partnering are still being explored[4,5].

3 Case study 1: Woodford Prison

The prison is a state-of-the-art, 600 cell prison located 80km North-West of Brisbane, with a contract value of \$58 million. It is used for the incarceration of maximum, high and medium security male prisoners. The facility comprises 27 separate one and two storey buildings, arranged in zones separating the maximum, high and medium security prisoners, limited prisoner access zones, non-prisoner zones, and a perimeter fence zone. The mix of facilities includes special cells for at-risk and protection prisoners, cells for handicapped prisoners, medical and dental facilities, and recreational, classroom, workshop and sporting facilities.

3.1 The team

The project team on Woodford Prison consisted of:

- The Queensland Corrective Services Commission (QCSC) as Principal;
- Project Services as Superintendent;
- Concrete Constructions Group (CCG) as document and construct contractor;
- Q-Build as Superintendent's Representative;
- Consultants; and
- Subcontractors.

This project was procured via a design and construct contract. Collectively the organisations and individuals associated with the partnering arrangement at Woodford were responsible for all aspects of the design, procurement, construction, operation and maintenance of the facility. Safety and environmental management was a major focus throughout the project.

3.2 Key dates

Contract awarded: 4th September, 1995

Partnering workshop; 16th November, 1995

Original Date for Practical Completion; 22nd March, 1997

Adjusted Date for Practical Completion; 12th April, 1997

Date of Practical Completion (major works); 28th February, 1997

Final Date of Practical Completion; 3rd April, 1997

3.3 The implementation of partnering

Partnering was implemented during the bid process for this project. From the outset Project Services, CCG and QCSC defined and understood each other's respective roles and responsibilities. In particular, the commercial necessity to optimise the design, construction, and operation was perceived to be of paramount importance.

In response to the QCSC's need to procure an operationally efficient, fit-for-purpose facility, delivered on time, within an established budget, CCG provided a competitive price and programme for delivering a facility which totally satisfied the Commission's requirements and which reflected a profit margin commercially acceptable to CCG's shareholders. The desire to adopt partnering was referenced in a Heads of Agreement signed by the parties.

Early commitment to a good faith clause with recognition that it was a basis on which all partnering principles are built, enabled the parties to successfully work together to develop an innovative and highly competitive tender proposal which was successful in winning the project against strong competition from the Private Sector.

3.4 The contract

Roger Quick, of Gadens Ridgeway Lawyers, was commissioned to prepare the head contract in a manner which reflected the partnering approach. The project established a number of 'firsts' for Queensland, including the incorporation in a State Government contract of a 'Good Faith' clause stating:

The Parties warrant they shall perform all duties and act in good faith. Acting in good faith includes:

- being fair, reasonable and honest;
- doing all things reasonably expected by the other party and by the Contract; and
- not impeding or restricting the other party's performance.

Other 'firsts' included the incorporation of a Risk Allocation Table as a schedule of the Head Contract, setting on record the expectations of the parties; and the inclusion of a schedule of administrative guidelines clearly outlining the partnering principles and procedures to be employed by the parties.

3.5 The workshop

The initial workshop was held on 16th November, 1995 and attended by 25 participants representing the Queensland Corrective Services Commission, Project Services, Concrete Constructions and Phillips Smith Conwell (Architect and lead consultant). The facilitator advised the participants on the recent history and principles of partnering including organisational change, team building, training, and the 'tools' of partnering. The parties then identified each others values, needs and objectives and proceeded to develop the

Partnering Charter, which included 13 project objectives, and was unanimously accepted and endorsed. An issue escalation process and a joint evaluation rating form were also developed at the initial workshop.

The mission statement for the project was:

The mission of the Partnering team is to design and construct the Woodford Correctional Centre, as a secure and safe facility for the management of all high and medium classified prisoners. The facility will exhibit excellence in design and quality of construction which will serve as a model for best practice for future Correctional Centre procurement and operation.

All parties commit to working together in a spirit of good faith, co-operation, open communication and timely responsiveness that respects the role of each partner and enhances the reputation of all partners.

3.6 Project objectives

The Project Objectives were to:

- Complete the facility according to the agreed specification and standards;
- Complete the facility within the agreed programme;
- Complete the facility within budget;
- Complete the facility without defect at practical completion;
- Recognise the commercial objectives of all stakeholders;
- Ensure safety during construction and design and construct facility to maximise end user safety;
- Optimise life cycle costs by considering operational requirements;
- No formal contractual disputes;
- Early resolution of all issues / challenges at lowest possible level;
- Streamline administrative procedures;
- Commit to continuous improvement of our work practices and procedures, which adds value to our project;
- Apply the principles of partnering to all of our endeavours;
- To be jointly and individually proud of the end product and enjoy the journey;
- Strive for excellence in all that we do.

Issues of disputation rarely occurred, and when they did the highest point of escalation of any issue was that of Project Manager and Superintendent, not one single dispute required senior management intervention. The project team had a philosophy of maintaining certainty of outcomes throughout the project and nurtured this via open and honest communication at all times.

The open lines of communication were a big cultural change with the subcontractors able to talk to each other and to the client's representatives. The main subcontractors worked with the design team to find solutions to problems as they arose, and to ensure the bottom line was unchanged as evidenced by the following quotes:

Past experiences in partnering with the private sector left many in our organisation a bit sceptical about the value that partnering could add to the project delivery process. On this project though the levels of co-operation between Project Services, Concrete Constructions Group and the Corrective Services Commission have left many with a very positive view of the partnering approach (Malcolm Missenden, Acting Director Health, Law and Order, Project Services).

The culture of partnering that we obtained at Woodford is not something that you can train people in. The objective of open communication, shared information, trust and respect for each other is something you can only develop in people by allowing them to share in the process (Stephen Green, Queensland and NT Branch Manager (Building), CCG).

In the beginning I didn't think it would work and after our first partnering meeting I was still very wary of the situation. [Now] *I would not hesitate in putting my name forward to go onto another project where partnering is proposed. I think it is the way of the future and traditional contracts are too much hassle, too many disputes. On this job here we've had no disputes* (Barry Preston, Superintendent's Representative, Q-Build).

To this project team, partnering was a way of working together to build a better future. The Senior Project Engineer from CCG, Mr Kip Hayes, stated that the personalities of the team were such that **"the team on Woodford would have partnered whether is was formal or not."** He also stated that it is important to involve everyone in the partnering agreement, "if everyone is not involved you are not getting the best result...everyone must be fair dinkum - it boils down to people."

3.7 Summary

Partnering success on Woodford Prison was achieved due to increased pride and commitment to a quality end product, and direct ownership of decisions taken. All of the project objectives on this project were met, with the objective to complete the facility within the agreed programme being exceeded.

The Woodford Prison project was, by all accounts, a very successful partnering venture. The project was completed six weeks ahead of programme, on budget, with no head contract variations or contractual disputes. It won the Master Builders Australia 1996 National Partnering Award for the commercial sector.

4 CASE STUDY 2: SOUTHPORT COURT HOUSE

This project involved the construction of the new Southport Court House and Watch House, and refurbishment of the existing court house, for the Queensland Department of Justice and Police Service. The project delivery system was traditional with the contract being awarded to Concrete Constructions on 14th October, 1996.

The project was divided into three separable portions being:

- Construction of the new watch house;
- Construction of the new court house; and
- Refurbishment of the existing court house.

4.1 The team

The project team on Southport Court House consisted of:

- Department of Justice and Queensland Police as Principal;
- Project Services as Superintendent and documentation contractor;
- Ainsley Bell & Murchison as project architects;
- Concrete Constructions Group as contractor;
- Q-Build as Superintendent's Representative;
- Consultants; and
- Subcontractors.

4.2 Key dates

Contract awarded: 14th October, 1996

Partnering workshop: 21st November, 1996

Adjusted Date for P.C. (Separable portion 1): 9th July, 1997

Date of P.C. (Separable portion 1): 9th July, 1997

Adjusted Date for P.C. (Separable portion 2): 8th October, 1997

Forecast Date for P.C. (Separable portion 2); 29th October, 1997

Original Date for Practical Completion; 10th November, 1997

Adjusted Date for final Practical Completion; 29th January, 1998

Forecast Date for final Practical Completion: 13th February, 1998

4.3 The implementation of partnering

Partnering was implemented on this project due to a request from CCG following their success on Woodford Prison.

4.4 The contract

The standard form contract AS2124 was used, with no modifications to reflect the partnering arrangement. The project delivery system was traditional, with fixed price competitive tendering.

4.5 The workshop

The initial partnering workshop was held on 21st November, 1996, with the inclusion of some subcontractors and consultants. Due to the project being a traditional delivery system the workshop was held after construction had commenced.

The mission statement read:

We as a team will redevelop the Southport Court-House and Watch-House to provide an outstanding facility for the Queensland Department of Justice and Police Service. In undertaking this task the team commits to applying Industry Best Practice, in an environment of mutual trust and respect, recognising the objectives of all project stakeholders"

An issue escalation process, and a joint evaluation form were also developed at the initial workshop. The remaining consultants and subcontractors were introduced to the partnering arrangement via the thought leaders, and were invited to sign the charter.

A review workshop was held on 7th August, 1997. It was attended by everyone who attended the initial workshop, and consultants and sub-contractors who had joined the project, and subsequently signed the charter.

4.6 Achievement of project objectives

The Project Objectives for this project were to:

- Operate in a flexible, open and honest environment;
- Meet project milestones and complete the total project within contract program;
- Undertake the project recognising the commercial objectives of all parties;
- Create and maintain a safe working environment for all;
- Complete the project according to agreed quality standards;
- Have no defects at practical completion;
- Maintain full operation of existing functions;

- Cooperate with existing users to maintain secure operational environments;
- Communicate in a timely and pro-active manner;
- Resolve issues at the lowest level;
- Pursue efficiencies in all work processes and practices;
- Take all measures to avoid contractual disputes; and
- Enjoy the journey.

Unfortunately, there were more project objectives which were not met than those that were. The comments from the Project Services Project Manager on the partnering rating form for September 1997 were:

It is of concern that issues raised by Superintendent's Representative [SR] in terms of non-conforming work are being disregarded when offered as constructive comments. Also the standard of work in some areas appears to be dropping off of late especially in terms of defect rectification.

Issues relating to urgency of RFI's [Requests for Information] appear to still be present and the possibility of the 'hidden agenda' syndrome appears to be creeping in.

There appears to have been a marked shift away from partnering over the past month.

Issues relating to existing occupants remains a concern, especially in terms of noise and interruption to operations during relocation.

The issue of safety has been raised a number of times over the past month and relates to not only personal safety but protection of completed works. [The] issue needs constant addressing.

As for the overall project, it is acknowledged that the past couple of weeks have seen a number of areas advanced and areas are now showing the signs of nearing completion, which is good to see. I look forward to completing the project on a co-operative basis for the good of all stakeholders.

In March 1997 there were signs that the partnering process was losing its direction as is evidenced by the following statement on the Thought Leader's monthly report: "There is a general perception that not all stakeholders are applying the principals of partnering to the project." The corrective action to be taken, as decided by the Thought Leaders was "All parties are to improve the turnaround of variations and claims. The apparent "game playing" is to cease and all parties are to get on with resolving the outstanding variations." In August a comment in the Thought Leader's monthly report was: "The Contractor and subcontractors again raised problems of design co-ordination with particular emphasis on services co-ordination. This was seen as an on-going concern and was beginning to cause concern on-site." The corrective action for this issue was "A meeting will be convened next week between CCG and Project Services to discuss design co-ordination issues on the project." This issue was not brought up again on the September rating forms and appeared to have been resolved.

A comment on the September review was; "Communications and the principles of Partnering appear to be eroding and is reflected in the rating forms received." The recommended corrective action for this problem was for "CCG and all 'stakeholders' to work together to bring the spirit of Partnering back on track." The sentiment may have been appropriate, but the comment lacked a process for implementation.

AS2124 is an adversarial contract with time limits and precise prescription specifying how things should be carried out. There is no flexibility in AS2124 to suit the open

communication, and trusting culture surrounding partnering.

At the time of writing there were currently approximately 200 variations and 50 contractor's claims on this project. The contractor was trying to recover money, not only because of the typical low margins associated with traditional tendering, but because liquidated damages were currently being applied to separable portion two. **The fight over money had begun, the partnering process had finished.**

5 SUMMARY AND CONCLUSIONS

Fixed price lump sum contracts are established by competitive tender often pressure contractors to reduce their profit margin in order to win the tender. The lower the profit margin the harder the contractor will look for documentation errors to recover some money. Therefore, fixed price lump sum contracts are not conducive to partnering. Neither is AS2124, with its regimented time limits.

In comparison, the Woodford Prison project was a design and construct project which would have allowed the contractor more flexibility in pricing the project, and because the contractor had control of the design cost savings could have been made. Hence, a design and construct project is more conducive to partnering as it is less likely to generate arguments over money.

Project Services and CCG were the main parties on both Woodford Prison and Southport Court House. Neither parties had any training in partnering prior to the project workshops. Therefore it cannot be concluded that training would make any difference to a project outcome. Both organisations had different project teams on Woodford Prison and Southport Court House, so different personalities may have affected the project outcomes. As Mr Kip Hayes of CCG stated "It all boils down to people."

There is no doubt that when partnering works it works well. However, over its relatively short history in the Australian construction industry partnering has had a slow and painful beginning. Partnering is a co-operative approach at building relying upon a non-adversarial relationship between two or more organisations in order to achieve specific business goals and objectives. The partnering process creates an environment where communication, commitment, trust, teamwork, respect and responsibility prevents disputes, fosters co-operative bonds and facilitates the completion of a successful project.

Even though partnering tries to promote a win-win situation there are sometimes disputes, generally over money, that are win-lose by. It is when these disputes arise that a partnering relationship may be strained. Some reasons for failure of partnering include:

- failure of most parties to understand the concept;
- the project or the culture of the parties involved is not suited to partnering;
- implementation without support from senior management; and
- parties using the partnering approach on a project and hoping to learn from their mistakes.

While every construction project is a challenge, the construction industry now has a project management tool to overcome the traditional obstacles that can adversely affect a successful construction project. "I am occasionally asked if partnering works. My answer is, even if there were to be no financial or performance advantages, it is clearly the ethical way of doing business" [6].

Partnering will not solve all of the problems encountered in the Australian construction industry on its own, but it does create a framework for conflict resolution, improved communications, reduced litigation and cost containment on potential overruns. It is a management tool that requires commitment, dedication, and a change of culture to make it successful.

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7 References

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